

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,051

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare that a payment of \$3,500 the petitioner received in June, 1997, constituted child support that was payable to the Department. The issue is whether under the pertinent ANFC regulations the payment must be considered child support as opposed to some other form of lump sum income.

FINDINGS OF FACT

The petitioner has attested to the following facts, which the Department does not dispute:

1. [Petitioner] is 49 years old and resides in South Burlington. She is the mother of one daughter, age 9.
2. Less than three months after [petitioner's daughter] was born, [petitioner] was married to [petitioner's husband], whom she identifies as [daughter's] father. However, at the time of [daughter's] birth, [husband] refused to acknowledge paternity, and he has never acknowledged paternity of [daughter].
3. The couple lived together for approximately eight years. In 1995, [husband] left the household, saying he was taking a job in Japan. [Petitioner] moved to Vermont, and for several months [husband] sent approximately \$1000 per month from Japan which [petitioner] and [daughter] lived on.
4. In the week of Christmas, 1996, the last regular check arrived. In January, when her funds ran out, [petitioner] applied for ANFC. She signed a form assignment of child support as a part of the application process (Exhibit 1).
5. [Petitioner] cooperated fully with the office of child support in attempting to establish a support obligation against [husband]. She filed a petition for child support in Chittenden Family Court. She corresponded with friends in Japan, who were unable to obtain a telephone number for [husband]. She wrote to her Congressman, who sought assistance on her behalf from the U.S. Consulate in Japan. Through the Consulate, she was apparently able to confirm that the address she had for [husband] was correct, but according to the Congressman's staff, [husband] refused to permit the Consulate to divulge any information about him (Exhibit 2).

6. The Office of Child Support has forwarded the same documents to the Consulate that it would ordinarily forward to another State in an interstate child support enforcement case, but no court has yet established jurisdiction over [husband] in any child support action, and no one knows whether it will be possible to do so, so long as he remains abroad.

7. On June 2, 1997, [petitioner] unexpectedly received by mail from Japan five money orders for \$700 each made out to her from [husband] (Exhibit 3). She promptly reported their receipt to her DSW caseworker, and requested declaratory rulings regarding whether she could treat the funds as lump sum income under WAM § 2250.1, and exempt from consideration in determining her period of ineligibility money she proposed to spend for necessary moving expenses and for the purchase, registration and insurance of a car (Exhibits 4 and 5).

8. The Department contends that the funds cannot be treated as lump sum income because they are governed by [petitioner's] assignment of child support rights.

9. [Petitioner] has attempted to return to the Department the ANFC checks and Food Stamps that she has received since June, but her caseworker has so far declined to accept them, and has not yet notified [petitioner] of any change in her benefits related to the receipt of the funds from [husband].

In addition to the above, the Department alleges, and the petitioner does not dispute, the following:

1. The petitioner, [name], is currently married to [husband]. Although she has not filed for divorce, the parties have lived apart since 1995. The parties do not have a separation agreement.
2. [Petitioner] received money payments from [husband] regularly until the end of December, 1996. At first he sent \$700 per month. Then he sent \$1,000. According to [petitioner], [husband] told her that [daughter's] life would be better when he got a good job in Japan. [Husband] sent [petitioner] a letter in which he stated he had received a teaching job in Japan paying \$30,000 per year. [Husband] sent another letter to [petitioner] in which he promised to send her money.
3. [Petitioner] considers the money sent by [husband] to be support for herself and [daughter].

ORDER

The Department's decision is reversed and the matter remanded to the Department to determine what, if any allowable expenses can be deducted from the lump sum payments the petitioner received in June, 1997.

REASONS

The petitioner has assigned to the Department her rights to "support", and has identified her husband as the "noncustodial parent" of her daughter. The petitioner's husband has always denied paternity, but even though he and the petitioner are separated, he has made significant, if sporadic, payments to the petitioner over the last several years that the petitioner (as, apparently, he himself) has considered to be "support" payments to the petitioner and her daughter. The petitioner has also signed an agreement with the Department to turn over to the Department any "child support" paid directly to her by the "noncustodial parent".

The petitioner maintains, however, that because it has not been "adjudicated" that her husband is her daughter's natural father, any payments made by him to her should not be considered child support, but rather "lump sum income".

The difference under the regulations is that if the payments are considered child support, the petitioner must turn them over to the Department; and after paying the petitioner a \$50 "passalong", the Department must then apply the entire amount to the husband's "past due support payments", which by law (see 33 V.S.A. § 3903) are equal to the amount of ANFC that has been paid to the petitioner to date. W.A.M. § 2331.36 (see *infra*). Because the amount of the husband's "debt" to the Department exceeded the payments he made in June, the Department would keep all those payments (less the \$50 passalong).

If the June payments are considered to have been lump sum income to the petitioner instead of child support, the petitioner would be entitled to keep the payments, have certain "allowable expenses" deducted from that lump sum, and be ineligible for ANFC for a period determined by dividing the amount remaining from her lump sum (after any allowable expenses) by the amount of her ANFC payment standard. W.A.M. § 2250.1.⁽¹⁾ Thus, the "net loss" to the petitioner would be significantly less if the payments are considered to have been lump sum income to the petitioner rather than child support.

It is concluded that the payments in question cannot be considered child support under the regulations. 33 V.S.A. § 3902 provides that as a condition of receiving ANFC a recipient must assign to the Department any rights to support from the "responsible parent". See also, W.A.M. § 2331.31. 33 V.S.A. § 3901(7) defines "responsible parent" as "the natural or adoptive parent or stepparent, to the extent the stepparent owes a duty of support under section 296 of Title 15, of a dependant child."

As noted above, the petitioner's husband has never acknowledged paternity. Under 33 V.S.A. § 296 his legal responsibility as a "stepparent" ceased when he and the petitioner no longer "reside(d) in the same household". The Department does not dispute that he and the petitioner are legitimately separated.

By law, the husband can legally be "presumed" to be the natural parent of the petitioner's child only if he has expressly acknowledged the same, through genetic testing (or his refusal to submit to it), or if he and the petitioner were married when the child was born. 15 V.S.A. § 308.⁽²⁾ The Department agrees that none of these conditions applies to the petitioner's husband.

Although the petitioner and her husband may consider his payments to her to be "support" for the petitioner and her child, the statute and regulations empower the Department to require the assignment of the right to collect support only against "responsible parents". As noted above, "responsible parent" is a legal term that defines the responsibilities of an individual and the rights of others, including the Department, against him. It does not matter how that individual perceives and acts on his moral duty to provide support, or how others perceive that duty. His legal duty to provide support is based solely on his relationship to the child. The petitioner may have signed an agreement assigning her rights to support to the Department, but at this time it has not been established that she has any such rights against her husband.⁽³⁾

Unless and until the father of the petitioner's child is legally adjudicated to be the child's natural parent, any payments he makes to the petitioner must be considered gratuitous, and, therefore, lump sum income to her--the same as from any other kindly friend or relative who makes a gift to an ANFC family. See W.A.M. § 2250. The matter should be remanded to the Department to determine how much

of that lump sum payment can be applied to the calculation of any period of ineligibility for ANFC.

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1. Because it has taken the position that the payments were child support and not lump sum income, the Department has not made any determination what, if any, expenses are allowable as deductions from the lump sum.
2. Under 15 V.S.A. § 302, the Department of Social Welfare has standing to bring an action to establish parentage (including required genetic testing) against an alleged father. It is not clear, however, whether before the instant case arose the petitioner ever informed the Department that the father had denied paternity of the child in question.
3. Similarly, it has not been judicially determined that the petitioner's husband has any obligation to provide her with spousal support. 15 V.S.A. § 291.